

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 674 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

20TH CENTURY FINANCE CORPN. LTD.

Versus

STATE OF GUJARAT

Appearance:

MR NILESH PANDYA FOR MR HARESH H PATEL for Petitioner
MR UMESH TRIVEDI ADDL PUBLIC PROSECUTOR for Respondent No. 1
MR MH RATHOD for Respondent No. 2
NOTICE UNSERVED for Respondent No. 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 05/07/1999

ORAL JUDGEMENT

#. Heard Mr.Nilesh Pandya for Mr.Haresh Patel, learned advocate for the revisioner. He submits that the petitioner is the financier who had advanced money to respondent No.3 for purchase of the vehicle in question. He in turn had sold the said vehicle to respondent No.2 because respondent No.3 failed to either return the money

or to pay to the financier. The respondent No.2 lodged a complaint against respondent No.3. Pursuant thereto, the vehicle in question was seized. The revisioner having come to know about this, applied to the learned Judicial Magistrate First Class, Deesa for custody of the vehicle pending the trial. The learned Magistrate has rejected his application and hence the revision.

#. Mr.Pandya submits that in light of the decisions rendered in cases viz. (1) RAJKUMAR N. JAIN VS. INSPECTOR OF POLICE P.5 POLICE STATION, MADRAS 1996, CRIM. LAW JOURNAL 3440 (2) M.M.PATEL & CO. & OTHERS VS. THE UNITED HIRE PURCHASE PVT. LTD. 1967 GLR VOL.III 468 AND (3) M/S SHRIRAM TRANSPORT FINANCE CO. LTD. VS. SHRI KHAISHIULLA KHAN AND OTHERS 19993 VOL.I CRIM. LAW JOURNAL 1069, the learned Magistrate ought to have given the possession of the said vehicle to the petitioner as he has better title than respondent No.3. He further submits that the petitioner had produced the registration book, agreement entered into with respondent No.3 and the statement of accounts to indicate that respondent No.3 had failed to pay the installments and therefore, the petitioner had better title.

#. Mr.Rathod on the other hand opposed this application firstly on the ground that the revision application is not maintainable at all as the order passed in question is purely interlocutory in nature. He has also drawn the attention of this Court to the fact that in the complaint before the learned JMFC, the petitioner had earlier preferred the application on 21st September, 1998 for interim custody of the vehicle under Section 451 of the Cr.P.C. The learned JMFC on 23rd September, 1998 passed an order to the effect that the because respondent No.3 is not before him, he can not grant reliefs sought for by the petitioner and the application was kept pending. Following that order, again the application came to be tendered by the petitioner before the learned JMFC on 9th November, 1998 seeking some relief and below that application, the impugned order came to be passed by the learned JMFC. Mr.Rathod has submitted that this order also does not conclusively decide the application regarding the interim custody of the vehicle in question. Mr.Rathod has readover the order to indicate that the order is of interlocutory nature. Mr.Rathod further submitted that the proceedings before the learned JMFC are of criminal nature and the petitioner has made an attempt to establish title over the vehicle in question. There is no illegality, impropriety or incorrectness in the order impugned and therefore this Court may not exercise its revisional jurisdiction.

#. Mr.Trivedi, learned APP adopted the arguments advanced by Mr.Rathod.

#. It is not in dispute that earlier on 21st September, 1998 this revisioner tendered an application before the learned JMFC for interim custody of the vehicle which still remains to be decided by the learned JMFC by virtue of order passed by him on 23rd September, 1998. It is also not in dispute that thereafter on 9th November, 1998, the revisioner tendered another application before the JMFC, Deesa seeking same relief and the impugned order came to be passed.

#. The perusal of the order impugned in this revision application clearly indicates that number of disputes regarding title are raised. The learned JMFC has observed that it is only one sided version before him coming from the petitioner that installments are not paid and therefore, the petitioner will have right over the vehicle by virtue of higher purchase agreement. Unless the other side viz. the respondent No.3 is heard, it cannot be determined whether installments as due are, in fact, not paid. The learned JMFC has therefore rejected the application recording the detailed reasons and passed the impugned order handing over the interim custody of the vehicle till earlier application of the revisioner dated 21-9-98 is conclusively decided after hearing the respondent No.3. The learned JMFC has also taken into consideration the various decisions relied upon by the revisioner and has properly discented and applied the ratio settled therein and has, in opinion of this Court, rightly come to the conclusion that the decisions cannot be applied to the facts of the present case.

#. If decision in M.M.PATEL & CO. AND OTHERS VS. UNITED HIRE PURCHASE PVT LTD is taken into consideration, there cannot be any dispute about the proposition of settled law in that decision. But in the instant case, the learned Magistrate has not given any verdict about the title of the revisioner and the learned Magistrate could not have come to the conclusion that the installments are not yet paid and therefore the revisioner is entitled to custody. The learned Magistrate has not yet conclusively decided the application of the revisioner. In fact, this is only the interlocutory order and therefore the revision is not tenable. The revision deserves to be rejected solely on this ground. However, even on merits as observed earlier, this revision application is not entertainable at all.

#. In a case reported in M/S SHRIRAM TRANSPORT FINANCE CO LTD. VS. SHRI KHAISHIULLA KHAN AND OTHERS (1993 Vol.I Crim. Law Journal 1069) it was held that in case of hire purchase agreement, it is permissible for the financier to seize the vehicle and have interim custody of the vehicle. However, as discussed earlier, the facts of the present case are very peculiar in the nature and are in no way similar to the said case and therefore, this decision cannot help the revisioner. In case reported in RAJKUMKAR N. JAIN VS. INSPECTOR OF POLICE P.5 POLICE STATION 1996 CRIM LAW JOURNAL 3440, it is observed that the temporary custody of the vehicle can be given to a third party who may be the financier in an agreement of hire purchase agreement. In the instant case, this decision also does not help the revisioner as no conclusive decision is taken by the learned Magistrate.

#. In case of TRILOK SINGH AND OTHERS VS. SATYA DEO TRIPATHI AIR 1979 SC 850, the facts were totally different than this case and there was dispute between the financier and the hirer and the financier took the possession of the vehicle and therefore the hirer lodged the complaint which came to be quashed on ground that the dispute was of purely civil nature and the criminal proceedings were initiated, was in abuse of process of Court and therefore, this decision will not help the revisioner.

##. In fact, as stated above, the impugned order is interlocutory in nature, in an interlocutory application and therefore, the revision would not lie, as the learned Magistrate has not conclusively decided the right of the petitioner. Under these circumstances, this revision is found to be devoid of merits and deserves to be dismissed. The petition stands dismissed accordingly. Rule discharged.

Date : 5-7-1999 [A.L.Dave,J.]

*kailash